

This submittal is intended to be the companion for the footnotes to the 12/21 DRB position paper submitted by 164 North Willard St.

## Footnote 1: 2015 DRB Decision

Below contains excerpts. The entire document can be found as separate attachment "Footnote1 Entire Document - 20150421 DRB Decision.pdf"

Description of Relevance:

Background, Motion and Findings Excerpt from DRB Decision to ZP15-0797AP from a Hearing on 4/13/21. A complaint was submitted about a newly created gravel structure and a use of parking on that structure per the background section. The DRB hearing only focused on the South of the driveway. Code Enforcement did not find parking during 3 consecutive visits and testified that parking could not continue. Code Enforcement did not dispute the reason for my appeal that the structure had existed for more than 15 years. Please notice "No Violation per the following findings" in the Motion Section and "the violation Complaint was unfounded" in the Findings

### **Background:**

A written complaint was submitted to the Code Enforcement Office on June 30, 2014; "North and south sides of driveway in rear has new parking constructed March 2013, parking on lawn ongoing especially since April/May 2014 (also visible from Dan's Ct.)".

II. **Motion by Israel Smith:** In the matter of ZP15-0797AP, 164 North Willard, I move we uphold the determination of no violation by the Code Enforcement Office per the following findings, and highly recommend that the owner of 164 North Willard submit a parking plan with lot coverage as it appears an expansion of parking has occurred on the north side of the driveway:

### III. **Findings**

#### **DETERMINATION:**

Based on the research conducted, information provided, including but not limited to statements by the owner of 158 North Willard and on-site observations by Code Enforcement it was determined that the violation complaint was unfounded as parking in the area at issue had ceased. Further, as the parking had ceased for a period in excess of 60 days, Appellant lost any potential claim to reestablishment or the 15 year statute of limitation. See CDO Sec. 5.3.2 below. This determination was issued on January 29, 2015 and is the subject of the appeal. Note that this determination only addresses parking south of the driveway.

# Footnote 2: 2021 Staff Report to ZAP-21-11

Below contains excerpts. The entire document can be found as separate attachment "Footnote2 Entire Document\_Staff Comments for ZAP-21-11 Appeal.pdf"

Description of Relevance:

Please notice in the staff report to the DRB for the appeal of ZAP-21-11 that an 'ongoing violation' related to a parking space is cited for the reason to deny the fence permit. Please see the '[approval is] predicated on the removal of the southern parking area' sentences by Mr. Gusting below and consider that statement's concordance to the decision provided by the DRB back in April 2015 stating 'Unsubstantiated Complaint' and 'no violation'

## **I. Findings:**

The subject property is located within a residential neighborhood along North Willard Street. The home is historic and most recently recognized as a duplex. The appellant is seeking approval to install a wooden fence in sections of various heights between 4' and 6' along the northern and eastern property boundaries.

The zoning application for the requested fence was filed March 9, 2021 and was deemed complete March 17, 2021. Following review of the application and prior zoning history and litigation

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records, zoning staff followed up with the applicant via email on March 29, 2021 to point out the following:

- The unpermitted "south" parking space remains in place and in use. Sec. 2.7.8, Withhold Permit, of the Comprehensive Development Ordinance precludes issuance of a zoning permit for properties that have ongoing violations – unless the permit is to remedy the violation. Such is not the case here.

.....

Very simply, the fence application cannot be approved until such time as an acceptable site plan is provided. That acceptable site plan is predicated on removal of the unpermitted southern parking area.

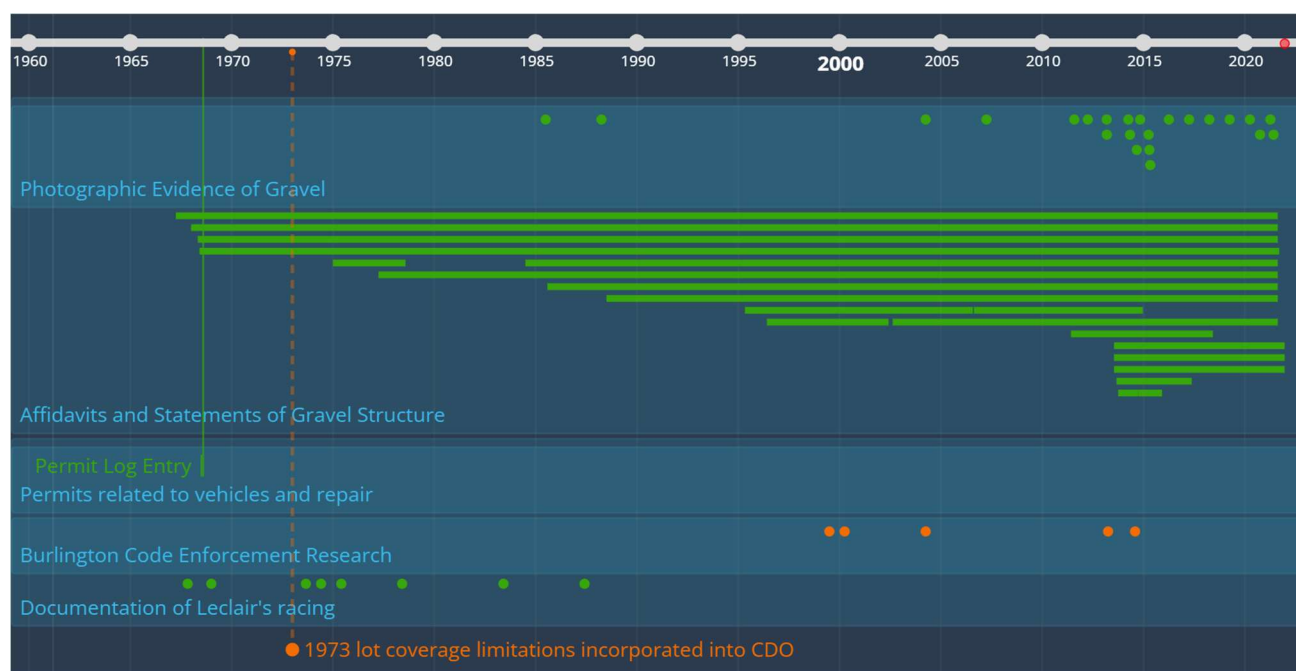
## **II. Recommended Motion:**

Uphold the zoning application denial of 21-0749FC.

# Footnote 3: Timeline with substantial research

## Description of Relevance:

Below is a timeline image of the substantial evidence collected to document the non-conforming status of the structure under dispute in ZAP-21-11, ZP-21-560. This is the area where the use of parking was found to be discontinued in ZP15-0797AP back in 2015 under a 60 day standard. Mr. Gustin believes the gravel structure began in 1983. Six neighbors have stated in sworn affidavits the structure began prior to 1983 and four of those neighbors testify to the structure beginning prior to 1973 when it would be legally pre-existing nonconforming. Each horizontal bar in the screenshot below shows an affidavit from a unique individual testifying to this structure's persistence. Although the below is just an image, If you visit the associated website, each object in the below screenshot is clickable and linked to the underlying document or photo. I have been intending to submit this website as part of work effort in the appeal to ZP-21-560 as an easy way for the DRB committee to consume the substantial amount of evidence and history collected in this permit. The second screen shot shows the functionality to see the underlying affidavit, and relevant bullet points of the affidavit when one clicks on a horizontal bar. The dots will show a photo when clicked.



## Cont. Footnote 3: Timeline



# Footnote 4: Mr. Cleary is ok with Gravel

## Description of Relevance:

Mr. Clearly consistently stated he did not have a problem with the gravel to the south of the driveway prior to complaining. This is an email from Mr. Cleary after his surveyor created a report. Please see yellow arrow in the "PS." section for a written sentence that Cleary was ok with the gravel. Because Mr. Cleary did not have a problem with this gravel, the affidavit Mr. Leclair constructed and signed on 8/25/14 did not explore an early history of this area that predated the primary concern, the easement for which I possess the dominant exclusive rights.

5/7/2016

Print

**Subject:** Re: survey followup

**From:** Joseph Campanella Cleary (jcc@campanellastrings.com)

**To:** lpurvis78@yahoo.com;

**Date:** Monday, May 19, 2014 3:55 PM

Luke,

As neighbors we both have the rights to enjoy our land. It feels really weird to be in one's own yard, and not to have full access—can you imagine that?

We are NOT asking you to give up your rights, but to consider fairness, and come to an agreement which represents compromise for both sides.

We are narrowly focused on gaining some use of the ROW for our family, while preserving your needs for access. That's the bottom line.

The iron pipes which the surveyors found on our shared boundary clarify where that line is located. They are consistent with the measurements of our property and yours, and clearly define the boundary of the western portion of the properties (where it is not encumbered by the ROW)—our "side-yard", which I've been recently clearing of stumps.

We are also ready to settle the question of the "path", a ~3' wide strip shown on the tax maps which seem to link our property to Dan's Ct. It may not actually be a path, but an artifact of inaccurate or mistaken measurements in deeds which were magnified by time. It was an unusual anomaly on the tax map, but not really something we are interested in pursuing.

The ROW also seems to have some problems with dimensions, when compared with the reality on the ground—it is poorly defined. Tim Cowan, the lead surveyor, calls it "geometrically impossible", and theorizes that it was estimated rather than measured. It was granted to Hector by a relative (his daughter), an attempt to gain land without purchasing it. Who else would agree to such an imposition?

The errors are sufficient for us both to have legitimate arguments as to the dimensions of the ROW, ensuring future conflict. This is not our goal. We would like to reach a peaceful and neighborly solution, and move on with our lives.

It is for this reason that we think re-defining the ROW makes the most sense, extracting our properties from each other, and entering a post-Hector era. In any case, we will be removing part of the fence to work on taking out some box elders.

Besides time and effort, we have invested a fair amount of money into the report and research. We are also willing to pay the costs associated with drawing up a new ROW, and we'd like to do it in a timely manner, so we can go into the summer with a clean slate.

# Cont. Footnote 4: Mr. Cleary is ok with Gravel

Important Sentence: “Still, I don’t really have a problem with the current triangle of gravel which is partially on the ROW...” from Mr Cleary

Besides time and effort, we have invested a fair amount of money into the report and research. We are also willing to pay the costs associated with drawing up a new ROW, and we'd like to do it in a timely manner, so we can go into the summer with a clean slate.

Can you meet this evening to look over the ROW/report and have a neighborly discussion?  
thanks,  
Joe

about:blank

1/2

5/7/2016

Print

P.S.

Parking is really a separate issue, which is specifically regulated by the city, particularly as it affects stormwater and runoff (contributing to wet basements and flooded streets).

There is no evidence that Hector followed any sort of code or ordinance when he constructed new parking in his yard on 3/7/2013—dumping 4 truckloads of gravel. Still, I don't really have a problem with the current triangle of gravel which is partially on the ROW, but if you wanted to expand this or construct new parking, I'd expect you to ask for P&Z approval at that time.

# Footnote 5: City Policy on Non Conformities

## Description of Relevance:

This shows the policy document that Scott and I had discussed regarding the decision to ZP-21-560. Based on this document, I understood an appeal to the DRB would be necessary if Scott determined "Evidence to the Contrary" existed and therefore must deny the permit.

8:47 PM Fri Aug 13

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Alison Davis, Planning & Zoning Clerk  
Ted Miles, Zoning Specialist  
Charlene Orson, Permitting & Inspections Administrator

PERMITTING & INSPECTIONS

  
William Ward, Director of Permitting & Inspections

## Footnote 6: Geo Technical Analysis

Neither Geo Technical Company (Knight Consulting Engineers Inc. or Geo Design) were willing to go on record for this appeal. There was no method specific enough to date when the gravel was deposited within a 15 year interval. Has any other property in Burlington been asked to conduct technical analysis on its gravel?!

## Footnote 7: 11/12 Request for extension so ZP-21-560 Appeal could be heard in January 2022.

Description of Relevance:

This is the communication I submitted on 11/12 in the online permitting system for ZP-21-560 directly after a phone conversation with Mr. Gustin. During that conversation, I was told if I requested the 3 month extension on ZP-21-560, Mr. Gustin would combine my appeals in a hearing in 2022. This extension request clearly shows my belief that this permit appeal for ZP21-560 would be heard at a DRB in 2022.



**Luke Purvis**

Nov 12, 2021 at 6:50 pm

Scott, i still am unable to effectively manage my permit.  
I request 3 months extension so I can have a drb after Christmas in January.

I would like you to acknowledge in a response here that we spoke on the phone and you agreed the Leclair affidavit was ambiguous and did not preclude the 2' strip from existing with gravel prior to the easement. Your decision letter said the Leclair affidavit precludes the 2k' strip from existing prior to 1983. That decision letter is absolutely contradicts what you verbally stated to Christina and I. I would like you to take a moment to explain this discrepancy.

Thanks  
Luke



## Footnote 8: 12/2 Communication Request to attach appeal

Description of Relevance:

I have requested the scan of the permit appeal from Mr. Gustin. To date, he has not provided this scan. I have unfortunately misplaced this document, so I am unable to attach it.



**Luke Purvis**

Dec 2, 2021 at 7:13 pm

Scott, please attach the formal appeal I submitted including 250\$ check to this record. That should clear up your confusion. My formal appeal was well timely as it was submitted on 10/22/2021.

Thank you

# Footnote 9: 11/26 Request for DRB Hearing

Description of Relevance:

This shows that I communicated with Mr. Gustin on 11/26 to ensure I would be able to have a DRB hearing on the reconsideration decision. This was the Friday following Thanksgiving.

-----Original Message-----

From: Luke Purvis <lpurvis78@yahoo.com>

Sent: Friday, November 26, 2021 4:05 PM

To: Scott Gustin <SGustin@burlingtonvt.gov>

Subject: 164 north willard. 2' strip determination

[ WARNING ]: This email was sent from someone outside of the City of Burlington.

Please make sure I'm able to have a drb hearing on this decision Thanks Luke

Sent from my iPad

# Footnote 10: 11/29 Requests to appeal


## Description of Relevance:

This shows that I communicated with Mr. Gustin on 11/29 twice to ensure I would be able to have a DRB hearing on the permit. You can see that by Mr. Gustin's response on 11/29, he did not inform as to additional documentation that I needed to take to actually appeal. He took the time to give an answer that did not clearly inform an action I would need to take to ensure appeal compliance. He stonewalled this appeal when he could have informed on a short coming.

4:21 PM Fri Dec 17


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City of Burlington, VT

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Luke

LP

**Luke Purvis**


Nov 29, 2021 at 5:41 pm

Scott, please confirm I will be able to appeal. I sent an email about this as well.

The decision was no violation...Jeanne's decision letter was a notice of non violation....so you are going to have to explain your logic. Would you mind doing that? I have asked a bunch of times. How does no violation equal on going violation to you?

If Jeanne has found a violation or provided evidence that the structure was discontinued or increased, then sure this would be a difference in opinion about whether the DRB decision to omit the language to restore to green space was purposeful. But this all started with a notice of non violation. So it was improper for Jeanne to include any mandate to remove a structure without identifying a violation of the structure. The drb recognized this error and removed the enforcement related to her flawed logic regarding the structure.


Would you also provide me the section of the ordinance that allows the city to remove a structure without issuing a notice of violation?

SG

**Scott Gustin**

Nov 29, 2021 at 9:36 am

Good morning Luke. This administrative determination is appealable. Today is the last day of the appeal period. In all of our correspondence about this matter, I have never said that no zoning violation equals a zoning violation. This seems to be your take on the city's position; however, it does not line up with the explanations I've provided.

LP

**Luke Purvis**

Nov 29, 2021 at 8:15 am

Ps. Make sure this is appealable. It is really upsetting that you will not respect me enough to explain To me how no violation = on going violation